

Original

TRANSCRIPT OF PROCEEDINGS

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of:

Maritime Communications/Land Mobile, LLC

EB Docket No.11-71

DATE OF HEARING: June 15, 2011 VOLUME: 1

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NEAL R. GROSS & CO., INC.
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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	EB Docket No. 11-71
)	
MARITIME COMMUNICATIONS/LAND	)	File No. EB-09-IH-1751
MOBILE, LLC	)	FRN: 0013587779
)	
Participant in Auction No. 61 and	)	Application File Nos.
Licensee of Various Authorizations in	)	0004030479, 0004144435
the Wireless Radio Services	)	0004193028, 0004193328
	)	0004354053, 0004309872
Applicant for Modification of Various	)	0004310060, 0004314903
Authorization in the Wireless Radio	)	0004315013, 0004430505
Services	)	0004417199, 0004419431
	)	0004422320, 0004422329
Applicant with ENCANA OIL AND GAS (USA),	)	0004507921, 0004153701
INC.; DUQUESNE LIGHT COMPANY, DCP	)	0004526264, 0004636537
MIDSTREAM, LP; JACKSON COUNTY	)	and 0004604962
RURAL MEMBERSHIP ELECTRIC)	
COOPERATIVE; PUGET SOUND ENERGY,)	
INC.; ENBRIDGE ENERGY COMPANY,)	
INC.; INTERSTATE POWER AND LIGHT)	
COMPANY; WISCONSIN POWER AND)	
LIGHT COMPANY; DIXIE ELECTRIC)	
MEMBERSHIP CORPORATION, INC.;)	
ATLAS PIPELINE-MID CONTINENT, LLC.;)	
DENTON COUNTY ELECTRIC)	
COOPERATIVE, INC., DBA COSERV)	
ELECTRIC; AND SOUTHERN)	
CALIFORNIA REGIONAL RAIL)	
AUTHORITY)	
)	
For Commission Consent to the Assignment))	
of Various Authorizations in Wireless)	
Radio Service)	

Wednesday,
June 15, 2011
Volume 1

Hearing Room TW-A363
445 12th Street, S.W.
Washington, D.C.

The above-entitled matter came on for hearing, pursuant to
notice, at 9:30 a.m.

BEFORE:

THE HONORABLE JUDGE RICHARD L. SIPPEL
Chief Administrative Law Judge

APPEARANCES:

On Behalf of the Federal Communications
Commission

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Deputy Chief

BRAIN J. CARTER, ESQ

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P-R-O-C-E-E-D-I-N-G-S

9:32 a.m.

JUDGE SIPPEL: Good morning. My name is Richard Sippel. I'm the Chief Administrative Law Judge and also I'm designated Presiding Judge in this case which is, I'm going to call it Maritime Communication et al, Enforcement Bureau Docket Number 11-71.

I received a hearing designation order, FCC 11M-14. That was released on 14 June of this year.

I'm assisted in the courtroom by my Law Clerk, Mr. Ross and my Court Clerk Ms. Gosse. So, anyway they are here to assist me and assist you if we need help. Okay.

Now, I'm going to first take an order of appearance and I'm just interested in -- well, let me start with Maritime because Maritime is really the central party in this case from my vantage point.

So, counsel for Maritime?

MR. KELLER: Your Honor, Robert Keller

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1 for Maritime.

2 JUDGE SIPPEL: Mr. Keller, good
3 morning, sir.

4 MR. KELLER: Good morning.

5 JUDGE SIPPEL: And then on behalf of
6 Mr. Havens.

7 MR. LIEBERMAN: Good morning, Your
8 Honor, Howard Lieberman on behalf --

9 JUDGE SIPPEL: Mr. Lieberman.

10 MR. LIEBERMAN: -- of Warren Havens
11 and the companies related to Warren Havens and
12 with me is my colleague, Patrick McFadden.

13 JUDGE SIPPEL: Mr. McFadden. My
14 goodness you have changed.

15 Okay. I will take in order of
16 appearances. Probably we can do it by what's in
17 the case, but let's start some place. And let me
18 get the Bureau first. Bureau counsel.

19 MS. KANE: Pamela Kane for the Bureau.

20 JUDGE SIPPEL: Ms. Kane.

21 MR. CARTER: Good morning, Your Honor,
22 Brian Carter, the Bureau.

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1 JUDGE SIPPEL: Mr. Carter. Great.

2 Now, let's start with -- I'm going to
3 call you the Petitioner parties, is that correct?
4 I'm sorry, the Applicant parties.

5 Mr. Havens is the Petitioner party.
6 Let's go with the Applicant parties then. Anyone
7 want to start?

8 MR. RICHARDS: Your Honor, our
9 client's name is first in the Applicant list so
10 if I could go first?

11 JUDGE SIPPEL: Thank you.

12 MR. RICHARDS: My name is Jack
13 Richards and with me is Wesley Wright from Keller
14 and Heckman. We have five clients in this
15 proceeding including EnCana Oil and Gas, USA;
16 Atlas Pipeline Mid-Content, LLC.

17 JUDGE SIPPEL: That's down ways?

18 MR. RICHARDS: Down ways, yes.

19 JUDGE SIPPEL: Atlas Pipeline?

20 MR. RICHARDS: Yes, sir.

21 JUDGE SIPPEL: Go ahead.

22 MR. RICHARDS: DCP Midstream, LP;

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1 Enbridge Company, Inc.

2 JUDGE SIPPEL: Go ahead.

3 MR. RICHARDS: Jackson County Rural
4 Electric Membership Corporation. Those are the
5 five.

6 JUDGE SIPPEL: Okay. Those are the
7 five. Well, thank you very much.

8 MR. RICHARDS: Thank you. And who
9 wants to go next?

10 MR. HULL: Your Honor, I'm Gerit Hull.
11 My client is Duquesne Light Company. My law firm
12 is Eckert Seamans and I'm here in place of
13 Charlie Zdebski who has actually, I believe,
14 entered an appearance already.

15 JUDGE SIPPEL: The name sounds
16 familiar. Is that Duquesne?

17 MR. HULL: Yes, Duquesne.

18 JUDGE SIPPEL: And that's all, just
19 Duquesne?

20 MR. HULL: Just Duquesne.

21 JUDGE SIPPEL: Okay. And next?

22 MR. COLE: Good morning, Your Honor.

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1 My name is Albert Catalano with Catalano &
2 Plache. My client is Dixie Electric Membership
3 Corporation, Inc., also known as DEMCO.

4 MR. MILLER: Your Honor, my name is
5 Robert Miller. I'm here representing Denton
6 County Electric Co-op, d/b/a CoServ Electric from
7 the law firm of Gardere Wynn Sewell in Dallas,
8 Texas.

9 JUDGE SIPPEL: Thank you.

10 Do you have a Washington Office or are
11 you --

12 MR. MILLER: No, I came for the
13 hearing.

14 MR. TURNER: Good morning, Your Honor.
15 Joshua Turner on behalf of Interstate Power and
16 Light and Wisconsin Power and Light Company with
17 Wiley Rein, LLP. And with me is Kurt DeSoto.

18 JUDGE SIPPEL: Mr. DeSoto, good
19 morning.

20 MR. DeSOTO: Good morning, Your Honor.

21 MR. TURNER: Good morning.

22 JUDGE SIPPEL: And what was it,

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1 Interstate and --

2 MR. TURNER: Interstate Power and
3 Light, IPL, and Wisconsin Power and Light.

4 JUDGE SIPPEL: Thank you.

5 MR. TURNER: WPL.

6 MR. SHELDON: Jeffrey Sheldon with
7 Fish & Richardson on behalf of Puget Sound
8 Energy.

9 JUDGE SIPPEL: Okay.

10 MR. COLE: Your Honor, on behalf of
11 Southern California Regional Rail Authority, I'm
12 Harry Cole of the firm of Fletcher, Heald &
13 Hilreth.

14 JUDGE SIPPEL: Mr. Cole you also--

15 MR. COLE: That was somebody else, I'm
16 sure.

17 JUDGE SIPPEL: Thank you so much, Mr.
18 Cole. You're Southern Cal. Okay. Southern Cal
19 exclusively, is that correct?

20 MR. COLE: Yes. Yes, Your Honor.

21 JUDGE SIPPEL: Okay. And you have
22 been most actively involved with the Footnote 7

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1 issue?

2 MR. COLE: That's correct.

3 JUDGE SIPPEL: All right. Now, I
4 think the first order of business, I'm going to
5 start with a few questions for Bureau counsel. I
6 have to find my questions. Here they are. If I
7 don't find these questions, Mr. Ross is going to
8 be very upset with me.

9 I want to know why are the -- well,
10 tell me your explanation as to why -- well, I got
11 them down as the CIIs but those would be the
12 Applicant's. Why are they named in the caption
13 of the case?

14 MS. KANE: They are named in the
15 caption of the case because we have to designate
16 the applications at issue for consideration in
17 the hearing.

18 JUDGE SIPPEL: But they're not being
19 charged with any violations.

20 MS. KANE: Correct. The assignees are
21 not being charged with anything in particular.
22 But the applications at issue are Maritime's --

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1 the spectrum at issue in those applications is
2 license to Maritime and, therefore, by statute we
3 needed to designate those applications. So by
4 virtue of that aspect, they had the option to be
5 a party in the hearing.

6 JUDGE SIPPEL: You said they had the
7 option to be a party or are they here as sort of
8 like prisoners where they --

9 MS. KANE: Well, Your Honor, they may
10 characterize it as such, but they certainly had
11 the ability not to file a Notice of Appearance
12 and not to be a party in the matter.

13 JUDGE SIPPEL: Well, then you find
14 yourself in default status. I don't know if
15 that's a good idea. I mean, under the Statute do
16 they have the option to, you know, is it a may --
17 you may be made a party, you may be made a party
18 or something like that or does it say you shall
19 be?

20 MS. KANE: I believe they have the
21 option, Your Honor, to be a party.

22 JUDGE SIPPEL: Anybody want to respond

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1 to that or comment on that?

2 Yes, sir

3 MR. RICHARDS: I will comment that we
4 have an option to stand back. If we did not file
5 a Notice of Appearance our application would have
6 been dismissed with prejudice under Paragraph 68,
7 hardly an option in real life.

8 JUDGE SIPPEL: In the broadest
9 interpretation of option wouldn't buy that one, I
10 agree. I agree wholeheartedly. I'm not trying
11 to press it. I just want to know what the
12 situation is here. So, then if the Statute says
13 that they're supposed to be here as part
14 notwithstanding the fact that they're not
15 particularly -- at least some are not
16 particularly interested in being here, what can I
17 do to get rid of them, to get them out of this
18 hearing?

19 I know -- well, let me ask you the
20 question. Let me ask it that way. That's pretty
21 broad. Let me ask you.

22 MS. KANE: I am not sure at this time

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1 that Your Honor has the authority to do much
2 about that. I mean it's pending before the
3 Commission at the moment regarding their
4 petitions for reconsideration about whether or
5 not they should have the option to be excluded
6 from the hearing.

7 JUDGE SIPPEL: Oh, I know what you're
8 talking about. You're talking about the Footnote
9 7?

10 MS. KANE: Correct.

11 JUDGE SIPPEL: Well, that's a
12 different route. That's an eight floor route.

13 MS. KANE: Correct.

14 JUDGE SIPPEL: I want a courtroom
15 route.

16 MS. KANE: I am not aware of a
17 courtroom route.

18 MR. KELLER: Your Honor?

19 JUDGE SIPPEL: Yes, sir.

20 MR. KELLER: Speaking for Maritime, I
21 believe that by way of characterizing what the
22 Commission is saying is essentially that one of

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1 the reasons these people are a party to the
2 hearing is because the theory would be that if
3 there's an ultimate finding on basic
4 qualifications against Maritime, and therefore,
5 the licenses are revoked, then obviously that
6 moots the assignment. That seems to be the sole
7 purpose of their being designated in this hearing
8 simply because they have the fortune or
9 misfortune of being assignees of licenses which
10 are currently under this revocation order.

11 We would advocate an approach that we
12 believe Your Honor has the discretion to do of
13 giving them the option of limiting their
14 obligations to participate in the hearing. In
15 other words, because they're being made parties,
16 they are, therefore, not required to do all the
17 things that parties deal with in terms of
18 discovery and everything else. And there may be
19 ways that you can limit that and simply carve
20 them out to the side making a note that -- we
21 would almost suggest perhaps deferring the issues
22 of these applications in sort of a bifurcated

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1 proceeding. In other words, let's go ahead and
2 have the hearing on the basic qualifications
3 issues and the construction termination issues.
4 Then if Maritime survives that, then we can look
5 at, you know, what to do with these parties. It
6 probably will not require an evidentiary hearing
7 on their issues at that point. But prior to
8 that, if there's a finding against Maritime, then
9 these applications become moot.

10 So, that would be my suggestion as the
11 way to -- you can't subject to, off the top of my
12 head right now, think the Bureau may be right,
13 but you can't just dismiss them from the hearing.
14 But I think you can bifurcate the hearing and
15 address their issues separately when and if it
16 becomes not moot.

17 MS. KANE: Your Honor?

18 MR. KELLER: Your Honor?

19 JUDGE SIPPEL: Well, just a second.
20 Because I know I was going to get to that with
21 Mr. -- it's Gerrit Hull, is that correct?

22 MR. HULL: Yes, Your Honor.

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1 JUDGE SIPPEL: Is Seamans your firm?

2 MR. HULL: Eckert Seamans, correct.

3 JUDGE SIPPEL: Eckert Seamans, okay.

4 Duquesne has a motion pending to bifurcate.

5 MR. HULL: And so do -- excuse me.

6 And so do a number of the other --

7 JUDGE SIPPEL: There are two of them
8 pending, that's correct. The most recent one
9 I've seen came in yesterday which kind of jogged
10 me, but I know exactly what you're saying.

11 And it was represented in yesterday's
12 papers from Mr. Hull -- Mr. Hull's firm that they
13 met with the Bureau for two days and couldn't get
14 an agreement from the Bureau to bifurcate.

15 MS. KANE: Well, Your Honor, the
16 Bureau's concern is that each of the petitioners,
17 both the Duquesne's motion for bifurcation and
18 the other CII petitioner's motion for bifurcation
19 seeks a broad cut-off of discovery of those
20 parties going forward, either until a certain
21 date or on only certain issues. And the Bureau's
22 concern is that that will limit our ability to

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1 seek discovery that they may have relevant to the
2 issues that they have designated as part of the
3 liability phase or directly solely to Maritime.

4 JUDGE SIPPEL: Well, I can assure the
5 Bureau that any person, any party is going to be
6 subject to discovery if they have relevant
7 evidence and you're seeking it. I mean, that's
8 not going to be an exclusion. So, I don't care
9 if they're in or out of the case.

10 MS. KANE: Well, that was the basis of
11 our concern, Your Honor, but we didn't feel that
12 it was appropriate to impose a burden on the
13 Bureau to obtain discovery by putting them in the
14 category of let's say a third party now where we
15 would not have those additional subpoena burdens
16 as party.

17 JUDGE SIPPEL: Oh, we'll handle that.
18 Don't worry about that. For the present, don't
19 worry about it.

20 MS. KANE: That was our main concern,.
21 Your Honor, is that we'll be --

22 JUDGE SIPPEL: Suppose we get rid of

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1 that concern, then do we have any concern?

2 MS. KANE: I guess it would depend on
3 what their new proposal would be.

4 JUDGE SIPPEL: To bifurcate.

5 MS. KANE: I'm not sure we understand
6 exactly what they mean when they've been asking
7 for bifurcation.

8 JUDGE SIPPEL: They don't participate.
9 They don't do anything in this case until --
10 unless and until there is a determination of
11 liability on the part of Maritime. Then they
12 come in on the penalty side, on the assessment
13 or, you know, what do you do to a licensee who,
14 you know, has got this problem. Because then it
15 becomes their problem.

16 MS. KANE: I guess I just want to
17 clarify that when you say they're not going to
18 participate at all, they are still going to be
19 subject to discovery at least from the Bureau
20 going forward?

21 JUDGE SIPPEL: That's a different kind
22 of participation.

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1 MS. KANE: Okay.

2 JUDGE SIPPEL: Anybody can be subject
3 to the discovery, they too. My point being is
4 they're not going to be required to come in here
5 every day. They're not going to be required to
6 put witnesses on the stand. They're not going to
7 be engaged in cross examination. They're not
8 going to be -- a lot of the discovery that you
9 take is going to be taken and they will not be
10 subject to. They can seek relief if they think
11 too much is being asked of them. But I think
12 that they would have an interest to work out with
13 you some kind of an operating agreement so they
14 can get away from me and not have to sit in this
15 courtroom in the summer.

16 MS. KANE: Your Honor --

17 JUDGE SIPPEL: I think that would be
18 in their interest.

19 MS. KANE: Well, that is not something
20 that they had proposed to us.

21 JUDGE SIPPEL: Well, that's why we had
22 today.

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1 MS. KANE: They were really focused on
2 the discovery issues.

3 JUDGE SIPPEL: Well, okay.

4 MS. KANE: That sounds like something
5 we could agree to.

6 JUDGE SIPPEL: Okay. Well, we'll get
7 to that. Thank you very much.

8 MR. KELLER: Your Honor?

9 JUDGE SIPPEL: Yes, sir.

10 MR. KELLER: I just want to say
11 something about the discovery thing.

12 The thing that I would advocate is
13 that they be treated as -- during the bifurcation
14 phase, that they be treated as non-parties for
15 purposes of discovery and I disagree with the
16 Bureau that that hampers the Bureau's ability to
17 collect information.

18 As you point out, even as non-parties,
19 you could take that position. You can notice
20 that position and take that. And there are some
21 slightly higher subpoena burden you've already
22 indicated you'll accommodate that.

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1 The only other restrictions are things
2 you can't do against a non-party are document
3 productions, interrogatories, but these are all
4 licensees too. So, the Bureau certainly has the
5 ability to ask them for information in their
6 status as regulators. So, I don't see that it
7 really hampers the Bureau's style.

8 MS. KANE: I would disagree that --

9 JUDGE SIPPEL: That's fine. You're
10 disagreeing with what?

11 MS. KANE: Well, if we would have to
12 go through a subpoena process and/or regulatory
13 process to obtain interrogatories or documents
14 that may be relevant to the subject matter of the
15 hearing, it seems like an incredible burden that
16 the Bureau shouldn't have to be forced to take
17 on. And if the only discovery obtained from
18 those depositions, many of these companies are
19 all over the country. As it is, the Bureau is
20 already absorbing the cost of going for other
21 depositions that we're aware of related directly
22 to Maritime. So, to have the only option be a

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1 costly deposition process seems like a burden we
2 shouldn't have to take on.

3 JUDGE SIPPEL: Well, I'm not going to
4 comment on that. But let me say this. What I
5 foresee is that there's going to be a first
6 attempt, a very serious attempt, at cooperative
7 discovery by way of letters or requests for
8 documents, whatever you want to call it. And if
9 you're being given a hard time and you've been
10 given a hard time by any of those applicants,
11 then you come to me. And, unfortunately, they're
12 going to have to come back in the courtroom
13 again. I don't see any reason for that to
14 happen. Everybody in this courtroom has an
15 interest one way or another in how things come
16 out for Maritime. And anybody that would get in
17 the way of interfering with that because of some
18 quirk about discovery -- I know they're
19 legitimate discovery objections. I don't mean to
20 say, I'm not talking about -- I'm not talking
21 about the things at the edges. I'm talking about
22 the thing in the middle. That makes no sense to

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1 me and I don't think you're doing -- you're
2 putting yourself in a good posture with the
3 Commission in light of the relief you're going to
4 be seeking down the road. I shouldn't say relief
5 but what you're asking of the Commission down the
6 road.

7 Now, is there anybody here from the
8 applicants who has a problem with that approach?
9 Okay. Done. Work it out.

10 MR. LIEBERMAN: Your Honor, if I may
11 on behalf of Warren Havens and his related --

12 JUDGE SIPPEL: That's different. I
13 haven't gotten to that yet. I'm dealing with
14 applicants, not --

15 MR. LIEBERMAN: I understand but will
16 we have the same rights that you just described
17 that the Bureau will have with regard to
18 discovery if there is something that we need from
19 one of the other parties because in light of what
20 you're saying, we may or may not need to seek
21 information from one of these parties and we'd
22 like to have the same rights the Bureau does

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